

Arkansas Public Service Commission

In the Matter of an Investigation of Policies Related to Distributed Energy Resources

Docket No. 16-028-U

Data Privacy and Data Access Working Group

Working Group Report

**Introduction**

The Arkansas Public Service Commission (PSC or Commission) initiated this proceeding to investigate and consider issues related to the development of distributed energy resources (DER) in Arkansas. To facilitate this discussion, the Commission identified the need for assistance to educate and engage stakeholders and identify topics of importance to the Commission and stakeholders related to DER. The facilitators were identified in summer 2018. The facilitators identified an initial set of topics that would guide the discussion over the course of the proceeding. These topics were:

- Interconnection
- DER Aggregation
- Data Access and Data Privacy
- Hosting Capacity
- Distribution System Planning

Beginning in spring 2020, the facilitators initiated working groups on Interconnection and Data Access and Data Privacy. The working groups completed their work in August 2020.

**Data Access and Privacy Working Group Meetings**

The Data Access and Privacy Working Group started with the facilitators introducing a Data Access and Privacy Rule Strawman proposal (Facilitator Strawman). The Facilitator Strawman was developed by leveraging work from other states, notably orders and rules from the California Public Utilities Commission and the Illinois Commerce Commission. The Facilitator Strawman also relies upon a draft rule introduced by the Attorney General's Office of North Carolina, in conjunction with Mission:data Coalition, in a data access proceeding before the North Carolina Utilities Commission.<sup>1</sup> Lastly, the Facilitator Strawman is organized around the Fair Information Practice Principles (FIPPs) and DataGuard,

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<sup>1</sup> The North Carolina Utilities Commission has yet to issue an order in its data proceeding.

which is a voluntary set of guidelines developed by the United States Department of Energy.<sup>2</sup> This initial Facilitator Strawman is included as Attachment 1.

The first two working group meetings were devoted to going through the details of the Facilitator Strawman and providing a forum for conversation, discussion, and answering questions about the Facilitator Strawman from participants.

After the second meeting, parties were encouraged to submit comments and suggested redline edits to the facilitators concerning the Facilitator Strawman document. Mission:data and SWEPCO (in consultation with other utilities) submitted separate comments that resulted in a revised Facilitator Strawman document developed by the facilitators and posted online. The SWEPCO redline is included as Attachment 2. The revised Facilitator Strawman is included as Attachment 3.

At the third meeting, the working group heard from Jolynn Dellinger from the North Carolina Attorney General's office (NC AG). The NC AG's office submitted a proposed data privacy and access framework, with Mission:data, in the North Carolina data privacy proceeding as noted earlier. In that meeting, the North Carolina Attorney General's Office discussed the importance of good data privacy practices to provide a level of trust about utility practices, as well as how those practices enable safer data sharing practices by the utility and customer authorized third parties. Since that document was used as the starting point for developing the Facilitator Strawman, the facilitators believed it would be beneficial for stakeholders to hear the perspective of the NC AG's office on this topic.

After the third meeting the utilities submitted a Joint-Utility Access to Advanced Meter Data Strawman Rule (Joint-Utility Strawman), which focused mainly on data access and only on AMI usage data. The utilities contend that privacy issues regarding data use, notice and disclosure are properly addressed pursuant to existing Arkansas law and in the electric utility service policies, company-specific data privacy and protection policies, and individual company terms and conditions for data access and modifications to the existing Arkansas framework beyond the Joint Utility Framework are unnecessary. The Joint-Utility Access to Advanced Meter Data Strawman is included as Attachment 4.

The fourth meeting included a presentation from UtilityAPI on their data access platform and discussion of the Joint-Utility Strawman.

The fifth meeting discussed a Matrix comparing the Facilitator Strawman and Joint-Utility Strawman on a number of different topics. In advance of that meeting, the Matrix was distributed to allow for stakeholders to submit additional comments on the two strawman proposals. Comments were provided by Wal-Mart, Green Button Alliance, Mission:data, and Audubon. The Matrix, including the comments, is included as Attachment 5.

The facilitators then drafted a working group report and circulated the draft to working group members for comment. The sixth meeting focused on a discussion of the comments received on the draft working group report. Comments on the draft working group report were received from Entergy (submitting jointly with OG&E and AECC), SWEPCO, Mission:data, and Audubon. These comments are included as Attachment 6.

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<sup>2</sup> <https://www.dataguardprivacyprogram.org/>

The facilitators re-iterated throughout the process that this was an effort to craft a solution or solutions for the Commission to consider as potential options on the topic. Should the Commission decide to open a proceeding to consider a potential rule, parties could then litigate issues there. As such, stakeholders were encouraged to treat this as an opportunity to find consensus on as many topics as possible so that the Commission may focus on a narrower set of disputed topics in a future proceeding, and save their litigation strategies for that proceeding.

A more detailed summary of all six meetings is presented below.

#### Meeting #1 - May 7, 2020

Note: on the morning of May 7th, 2020 there was a workshop held in this docket that featured a presentation from Rachel Gold of ACEEE which discussed enhancing the value of AMI investments. Data access and privacy was amongst the topics discussed during the presentation, but since it was not a working group meeting – only the afternoon session was – that workshop is covered in the larger report and not here. There are, however, a few references to the morning session below.

The agenda for the first meeting was to introduce the Facilitator Strawman created by the facilitators, which was based upon a proposed rule in North Carolina and added elements from existing rules in California, an existing framework in Illinois, and DataGuard. The Facilitator Strawman is also largely based off and organized around the FIPPs.

Participants had questions regarding if any gap analysis had been done between the Facilitator Strawman and existing law. A previous working group, led by the Attorney General's office, was to identify legal gaps between topics raised in the proceeding and existing statutes. Based on a report from the Attorney General's office at the January 2020 in person meetings, no progress had been made by the participants in the working group to identify topics or legal gaps. In the morning session there had been discussion from a presenter on the need for a data framework to enable customers to access their data. During the discussion in that earlier meeting, there was a recognition that new regulations may be needed to allow customers to access their data and to ensure that privacy is appropriately protected.

Participants had a number of suggestions on topics that ranged from the definition of anonymized and aggregated data, the definition of utility, the definition of third parties who are not contracted with the utility, and a clear reference point for when a utility should provide a copy of its privacy notice to customers in a language other than English.

On May 19, 2020, SWEPCO submitted redline comments on the Facilitator Strawman document. It was explained by SWEPCO that its comments included input from other utilities, but there was no clearly identifiable way to discern which comments and edits came from which utility. Additional comments were received from other stakeholders, which were also taken into consideration by the facilitators. Other participants indicated that they were still working on comments.

#### Meeting #2 - May 21, 2020

Agenda: Finish reviewing the Facilitator Strawman document

The working group had a robust discussion about topics covering the entire Facilitator Strawman. A representative of the electric cooperatives repeated that they wanted to make sure their silence is not taken as acceptance of the Facilitator Strawman or any of the discussions.

Participants started by discussing Aggregated Data. There was broad acceptance for the concept but some were curious about whether the presentation of aggregated data would be limited to a menu of off-the-shelf report frameworks available (as outlined in the reporting and rate schedules section of the Facilitator Strawman) or expanded to include customized reports with fees based off of a time and materials basis. The facilitators and other participants talked about their experiences with aggregated data, with one recounting how many requests come from municipalities and building owners. There was also a discussion on how a report listing the types of aggregated data reports were available could help cut down on the level of labor-intensive requests.

Some utility participants were wary of customers being uneasy with their data being released, and the facilitators and other participants reminded them that the Facilitator Strawman not only includes a directive that utilities have to take into account “customer class and risk” when anonymizing data, but the data itself is anonymized. As such the data would no longer be identifiable customer data since it cannot be associated back with any customer without an unreasonable amount of work.

Another participant brought up elements of the rule regarding the release of data to law enforcement officers covered in the section Reporting on Disclosures Pursuant to Legal Process. They raised the point that they do not have a good way of knowing the status of police investigations or court cases. This section was set up to allow for the data to be released without any liability for the utilities but for utilities to also protect themselves by publicly reporting if data has been released without needing to identify or give notice to the individual customer affected. This report is intended to benefit the public and the Commission so they could also know the amount of data being released. With the reporting, if there is public concern about the releases, the utilities are supposed to be shielded because they can point to the reports to show that it was not done in secret but was made available according to rules.

The jurisdiction over and regulation of third parties was a thoroughly discussed topic. As was repeated in other meetings, here, a participant wanted to explore whether the sections concerning Data Minimization, Quality, Security, Accountability and Auditing should also be prescriptive for third parties. Some participants were also concerned about the lack of authority that the Commission has over third parties. Others pointed out that the Facilitator Strawman was designed around the assumption that the Commission does *not* have jurisdiction over third parties, and noted the Facilitator Strawman’s requirements are on utilities to manage third party registration, and do not act directly upon third parties.

The facilitators explained that the Facilitator Strawman creates eligibility requirements for third parties (via registration with utilities) that include being DataGuard certified which covers most of these areas, but also includes a dispute process under which the Commission creates a “global” (*i.e.*, statewide) finding of whether a third party is eligible to obtain customer data. While there would be no list of Commission-authorized third parties, there would be a list of prohibited ones.

Participants talked through many implications of and whether the utilities truly could be free from any liability once the customer authorizes the release of data. From the perspective of the regulator, the Facilitator Strawman would protect the utility from liability of a Commission investigation, for that data

authorized by a customer to be released, but, in the case of a civil investigation, the Facilitator Strawman would not have the same reach. The facilitators explained that the Facilitator Strawman was structured to reduce legal risks to the utility with its requirements, and any formal Commission rulemaking or other proceeding can include further language addressing this, but the participants agreed that cases and lawsuits filed in civil court were outside the scope of the Facilitator Strawman and Commission authority.

The group ended with a discussion about breaches and reporting. Many utility participants thought existing statute and rules covered this area and further asked why third parties were not subject to these requirements. The facilitators and other participants explained the Facilitator Strawman and the North Carolina proposed rule's approach depends on DataGuard and the dispute process. Some participants agreed that the contractual relationship between the utility and the third party to become eligible for and to receive data could include some of these reporting requirements.

#### Meeting #3 - Jun 18, 2020

##### Agenda:

- Presentation from Jolynn Dellinger from the North Carolina Attorney General's office. The NC AG's office submitted a proposed data privacy and access framework, with Mission: data, in the North Carolina data privacy proceeding. The facilitators used that document as the starting point for the Facilitator Strawman and thought it would be good for the stakeholders here to hear the perspective of the NC AG's office on this topic.
- Continue discussions on the draft data privacy and access Facilitator Strawman. Participants were sent attached with the agenda notice an updated Facilitator Strawman in response to the discussion from the prior meetings and comments received from the utility participants.

In advance of this meeting, the facilitators distributed an updated version of the Facilitator Strawman in response to the discussions in the first two working group meetings and the comments of SWEPCO.

Ms. Dellinger talked about the goals of the North Carolina AG's proposal, which are Access, Portability, and Interoperability. They wanted to ensure that customers received openness, transparency, and notice to make informed choices about their data. They wanted to ensure utilities did not have liability once the data was authorized to be sent "out of the building." She highlighted the importance to her of the FIPPs as an organizational tool and best practice. She then described the NC AG proposed rule: data separated into primary and secondary purposes; utilities cannot sell data; utilities can use data without consent for primary purposes and the same requirements apply to utility contractors; any other purpose needs consent; customers can access and share their data; and third parties must be technically able to share the data and must be DataGuard certified. Ms. Dellinger told the participants that privacy debates usually focus on setting limits and barriers to sharing and access of data, but access is important and customers are demanding it.

After her presentation, several questions were raised in response to her presentation. One was the way the proposed rule treats third parties. In her response, she noted that the North Carolina Utilities Commission did not think it had jurisdiction over third parties, so the rule put all requirements, even those regarding third parties, on the utility. In addition, the North Carolina proceeding is on-going, so the proposal was still pending and subject to comments by participants in that proceeding.

Another topic Ms. Dellinger addressed was whether there is a benefit to having one data access rule. She responded that she noticed there is a feeling that there is a proliferation of regulations that utilities have to comply with. Concerning Data Access and Privacy, she noted that North Carolina had various sets of rules, terms and conditions, and tariffs. She remarked that too many documents can create ambiguity, but if you have one rule that sets the obligations and informs the customer about what affects my access and use, then in her opinion it is much better. It has the effect of making the utility policies more uniform and informs the privacy policies of each, so everyone from the utility, to the third parties, and to the customer have better aligned expectations.

After conclusion of discussion with the North Carolina Attorney General's Office, the working group moved on to discuss the comments received from SWEPCO and the revised Facilitator Strawman. To start, the facilitators identified several specific questions to elicit conversation and receive feedback from the working group. Notably, the facilitators sought conversation on:

- The difference between "provide and bill" and "provide, bill, and collect for electric service" as a primary purpose;
- A technical description of customer authentication based on implementing Green Button Connect; and,
- Whether termination of a customer's consent includes disconnection of service due to non-payment or whether termination only applies to termination of a customer's account.

During the working group meeting, a question was asked by SWEPCO regarding the extent of the revised Facilitator Strawman's acceptance of the SWEPCO edits. The utility representative was concerned that many of the utility comments were rejected and sought to better understand the reason for the facilitator not accepting their edits.

The facilitators responded they were attempting to provide a balanced document back to the Commission that is based on the widely-accepted FIPPs.<sup>3</sup> The facilitators welcomed more comments and even counter proposals in addition to robust conversation on all of the revised Facilitator Strawman but that it was the facilitators' job to create a document informed by national best practices even if not all sides of an issue are adequately represented in the working group meetings.

The facilitators offered to go over all of the redline comments with the entire working group or with the utility working group representative, SWEPCO, one-by-one. Lastly, facilitators noted that stakeholders will have an opportunity to litigate any of these issues in whatever proceeding the Commission decides to open in the future on this topic.

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<sup>3</sup> FIPPs are used by privacy practitioners and government agencies around the country as their default organizational privacy tool. For example, the U.S. Department of Homeland Security notes "The Fair Information Practice Principles are the framework for privacy policy at the Department of Homeland Security. The "FIPPs" provide the foundational principles for privacy policy and guideposts for their implementation at DHS." (<https://www.dhs.gov/publication/privacy-policy-guidance-memorandum-2008-01-fair-information-practice-principles>) Additionally, the FIPPs have been used as the basis for a number of Federal statutes, including the Electronic Communications Privacy Act of 1986 and the Children's Online Privacy Protection Act. See, "Privacy Policy Guidance Memorandum," U.S. Department of Homeland Security, Memorandum No. 2008-01 (December 29, 2008) ([https://www.dhs.gov/xlibrary/assets/privacy/privacy\\_policyguide\\_2008-01.pdf](https://www.dhs.gov/xlibrary/assets/privacy/privacy_policyguide_2008-01.pdf)). Lastly, the California PUC adopted the FIPPs as the organizational framework for the development of its data privacy rule.

There was also a detailed discussion regarding the implementation of Green Button Connect. A utility described their concerns with Green Button Connect, particularly when authorization begins with the third party. The utility stated they have a process they prefer where the customer initiates authorization with the utility via a Letter of Authorization. The utility stated their preference that the agreement to provide data is between the utility and the customer. Mission: data noted that one of the issues Green Button Connect, and the OAuth<sup>4</sup> process, are trying to address is where the customer gives away their utility webpage log-in information because there is not an easier way for a customer-authorized third party to access that customer's usage data. Having the customer give away that information is a significant privacy and security risk that should be avoided if possible. Another utility participant noted its belief that Green Button Connect can be implemented without authorization beginning with a third party. Upon discussing this during the last working group meeting while reviewing this report, representatives from the Green Button Alliance noted that this utility belief was false. A recent update to the standard states the authorization process must start from the third party. Though a pre-approved list of vendors from the utility website could send customers to the third party website in the first place, the actual authorization process starts at the third party website. The authorization process could be overly simplified to: first, the customer and third party agreeing to the scope of their agreement and the data sought from the utility; then second, the customer is sent back to the utility to authenticate themselves (using information of the utility's choosing) and give consent; and third, the customer is returned to the third party site and the third party submits a formal IT request for the relevant data for which the customer just gave consent.

For discussion at a later time, the facilitators discussed sharing standardized consent forms for safe harbor or required language. They were also planning on including a more detailed description of a formal dispute process.

#### Meeting #4 - 7/16/2020

Below is the agenda for the meeting:

- Welcome
- Presentation and demo from UtilityAPI on Green Button Connect
- Questions
- Discussion on Joint-Utility Strawman
- Open discussion
- Next steps and conclusion

In advance of this meeting, the joint utilities provided a draft data access framework (Joint-Utility Strawman). The Joint-Utility Strawman was distributed in advance of this working group meeting in preparation for discussion.

The first part of this meeting was a presentation by UtilityAPI discussing its data access and Green Button Connect implementation. UtilityAPI noted that it is the only Green Button Alliance certified

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<sup>4</sup> "OAuth is an open standard for access delegation, commonly used as a way for Internet users to grant websites or applications access to their information on other websites but without giving them the passwords. This mechanism is used by companies such as Amazon, Google, Facebook, Microsoft, and Twitter to permit the users to share information about their accounts with third party applications or websites."

<https://en.wikipedia.org/wiki/OAuth>

Green Button Connect implementation in the country, and that certification is vital to ensuring that the standard is implemented correctly and consistent with the underlying Energy Services Provider Interface standard (NAESB REQ.21). According to UtilityAPI, there are three major components of a successful data access proposal:

- 1) Registration which includes the ability of the third party and customer to register online, that the third party has described the use of data, development of a directory of available third parties, and settings that guide the interface for third parties;
- 2) Authentication Interface which describes how the customer's consent is authenticated, does not require an online utility account, is focused on a point and click process for customer authentication, provides customers with a receipt for their consent and an opportunity to revoke that consent, and has a MyAuthentication interface for customers;
- 3) Data Transfer API which allows for small business or other customer who is unfamiliar with APIs to follow point and click dashboard for small businesses, increases accessibility, and provides documentation for developers.

To show how these practices are in place, UtilityAPI ran a live demonstration of its upcoming platform for the City of Ft. Collins, Colorado, which is a municipal utility. Its platform provides additional functionalities for developers by providing a sandbox for developers to build applications by using fake data. Sandbox mode occurs while the developer is waiting for approval from the utility to be an authorized third party. The platform also facilitates putting the customer in charge of consent and revocation whenever the customers wants to revoke access.

The utilities asked several questions regarding adoption and use of Green Button Connect, and UtilityAPI clarified that there are no utilities in the United States that have implemented a certified Green Button Connect platform; a Canadian utility, London Hydro, is Green Button Alliance certified. UtilityAPI noted that it is trying to create an off-the-shelf solution to avoid having each utility develop its own solution individually. UtilityAPI also described how other utilities have not implemented a certified Green Button Connect product, which has led to significant delays in those markets in getting data to the customer and their authorized third parties. UtilityAPI stated that implementation requires two components: Authentication Protocol (failure to implement OAuth 2.0<sup>5</sup>) and Data Formats (failure to implement the xml schema).

Utilities also asked questions about cost to implement Green Button Connect. UtilityAPI was not able to provide specific details as costs are going to depend on the use case, but explained there would be license fees that varied with usage. However, they did note that by using an off-the-shelf platform, they believed that utility would then no longer be paying for development costs and can drop in the platform and work with whatever data solution is in place. Utilities did not necessarily agree with that view. Additionally, by moving to online consent and authorization, the timeliness of customer consent and accessing customer data can be shortened by moving away from a paper-based consent process.

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<sup>5</sup> "The OAuth 2.0 authorization framework enables a third-party application to obtain limited access to an HTTP service, either on behalf of a resource owner by orchestrating an approval interaction between the resource owner and the HTTP service, or by allowing the third-party application to obtain access on its own behalf." The OAuth 2.0 Authorization Framework, available at <https://tools.ietf.org/html/rfc6749>.



Lastly, a utility asked a question about the data being shared and the role of the Retail Customer Schema and Usage Summary associated with Green Button Connect. UtilityAPI stated that the Retail Customer Schema and Usage Summary are not required components under the standard and are not necessary for certification, but that Green Button Connect and the Retail Customer Schema is necessary to implement in order to ensure that the third party and the customer can match their real-world data with the appropriate meter. UtilityAPI added that the available data must be more detailed than the usage summary since customers think in dollars, not kwh. In order to provide customers with the information they need to act, customers and their third party partners need the billing determinants and associated data, not just kwh.

Green Button Alliance added clarification that Green Button Connect is not limited to AMI data; rather, the standard requires data which can be of any granularity, be it 15 minute, 1 month, or 1 year. In addition, Green Button Download and Green Button Connect each have fields that allow for more than usage data to be made available. Other data that can be made available via the standard include billing determinants, such as rate and billing cycle, voltage, and other data quality data.

The meeting then turned to a discussion of the Joint-Utility Strawman. The utilities stated that their rule was aimed at consensus on AMI usage data access, because other issues like privacy, data use, and non-AMI data are covered by existing Arkansas law, rules, and policies. To that end, the Joint-Utility Strawman would begin to apply to a utility only when more than 2,500 advanced meters have been installed, and the Joint-Utility Strawman provides the framework for customer and authorized third party access to AMI data only. Additionally, the Joint-Utility Strawman does not include privacy provisions because, according to their presentation, that topic is covered by existing Arkansas law, rules, and policies. Furthermore, they stated the Joint-Utility Strawman provides flexibility to the utilities to implement different terms and conditions for AMI-data access sharing with third parties.

To assist stakeholders and the Commission, the facilitators agreed to develop a matrix that would identify a set of key decision points on which the proposals differ and describe how the revised Facilitator Strawman and Joint-Utility Strawman addresses each point. That matrix would be distributed and stakeholders would be allowed to provide their thoughts on each topic.

#### Meeting #5: Thursday, August 13, 2020

- Discussion on Data Matrix

In advance of this working group meeting, facilitators distributed a matrix outlining key decision points and a description of how each proposal addresses the topic. The Matrix was developed with the assistance of Mission:data and Entergy prior to release to ensure that the descriptions were accurate and detailed enough for people to provide comment. Facilitators received comments on the Matrix from Wal-Mart, Audubon, Green Button Alliance, and Mission:data. These comments were then added as additional columns to the Matrix and then re-distributed out to the working group.

This meeting focused on discussing the Matrix, the role, scope, and purpose of each strawman, and the comments received. During discussions, several key differences were identified, with commenters siding one way or another. Differences include:

Applicability of a rule- the revised Facilitator Strawman would apply to all utilities that hold customer information regardless of granularity, whereas the Joint-Utility Strawman only applies to AMI usage data

and when a utility has more than 2,500 advanced meters installed. The utilities say this is because it is based on the premise that existing Arkansas law, rules, and policies already cover non-AMI data.

Availability of data- the revised Facilitator Strawman would allow a third party to obtain 24 months of historical usage data, whereas Joint-Utility Strawman would allow the prior 12 months of historical usage data. Both documents include the caveat that less usage data could be available if the customer has only lived at that address for less time.

Inclusion of details- the revised Facilitator Strawman includes significant details regarding privacy and use of all customer data, whereas Joint-Utility Strawman focuses on AMI usage data and leaves the rest of the details to the utilities. Those details would be described in the Terms and Conditions, a document which would not be reviewed or approved by the Commission, but would be available on the utilities websites.

On the other hand, there were areas of general agreement between the documents. Areas of agreement include:

Availability of Aggregated Data- both documents include details regarding the conditions under which aggregated data could be made available. Since aggregated data is removed of identifiable data, it does not require customer consent to be made available.

Third Party requirements- both documents provide details regarding third party eligibility requirements in order to be eligible to receive customer usage information.

Standardization- both documents detailed the role of a standard process and format for accessing customer usage information, including the use of industry standards like Energy Services Provider Interface (NAESEB REQ.21), which underlies Green Button, to facilitate that customer exchange and access.

After this meeting, facilitators received an updated description of the Joint-Utility Strawman in the matrix.

Meeting #6: Monday, August 31, 2020

This meeting was held jointly with the Interconnection Working Group to discuss the draft facilitator's working group reports. During this meeting, we discussed the comments received from participants and identified areas in the draft report for revision. Entergy discussed their comments and proposed revisions. During the discussion, Entergy discussed their planned Green Button Connect implementation and Green Button Alliance commented that Entergy's proposal was not consistent with the Green Button standard. SWEPCO noted their position that additional language should be used at the beginning and end of this report about what they see as a lack of consensus on issues around data access and privacy. Their representative stated they believe it is important to further discuss the complicated issues that remain. They believe all considerations and feedback described below still require further discussion through working groups, or would need to be pursued through an identified, inclusive, and transparent rulemaking process. They also wanted to reiterate what is already included in existing law or could be covered with Terms and Conditions documents.

Mission: data briefly went through their comments and proposed edits.

After conclusion of the working group, facilitators reviewed the comments and took into account the discussion held during the final working group meeting. This Report represents the facilitators' best efforts to provide the Commission with a view of the topics and discussions held throughout the working group process. It is intended to inform the Commission about the topic and identify opportunities or topics for further consideration related to data privacy and access.

### **Questions for the Commission to Consider**

To assist the Commission in considering a starting point for a potential data privacy and access rule or guidance, the facilitators are including a set of questions, based on the discussions held to date in the working group and our experiences in other jurisdictions. The Data Access and Privacy working group was able to help narrow down the relevant questions due to the broad agreement, referenced above, on many elements of, and importantly the need for, a statewide Data Access rule, at least for AMI data, or other similar guidance.

One fundamental question that affects many of the items below concerns the level of control and oversight the Commission wants to implement on Data Access and Privacy. As covered below, especially in question #3 concerning Oversight of Third Parties, the Commission should decide whether it would enforce and ensure statewide standards, or whether it would allow the utilities flexibility to mold their policies largely through existing requirements or Terms and Conditions not subject to Commission review.

The electric cooperatives note, on these issues, that they have a pending Motion for Exemption from this proceeding and would seek to extend that exemption to any subsequent rules or orders originating from the Commission's inquiry in this Docket or additional dockets originating from the same.

1. Applicability
  - a. AMI Data or Non-AMI Data

A fundamental question for the Commission to consider is whether it needs to adopt a new data access rule that applies to AMI data or whether the new rule should also include non-AMI data. Non-AMI data includes monthly meter data, billing information, account information, premise addresses and other information presented on bills. For example, Green Button Connect includes recommended "retail customer" information such as billing details, account information and premise addresses.

- b. Applicable to Which Utilities

This question also concerns which utilities would be required to follow a final Commission order. If the Commission develops a new rule that only applies to AMI data, then that rule would apply to utilities with AMI. If the Commission looks at this question more broadly and determines it needs to adopt a new rule that is not limited only to AMI data, then the Commission would need to decide whether the rule applies to all utilities or just the investor-owned utilities.

2. Availability of Historical Usage Data

It is important to note that there are different types of use cases when considering data access. For purpose of this question, a use case includes the one-time authorization where a third party may only want historical usage data. The revised Facilitator Strawman says that the prior 24 months of customer data should be available, and the Joint-Utility Strawman allows for the prior 12 months of usage data.

During discussions, third party advocates suggested 36 months of usage data would be better, along with 36 months of billing history and other account information. The historical usage data is used by third parties to get a sense of the yearly usage of a customer to run an analysis of potential bill savings. Having access to more than one year's worth of usage data allows the third party to analyze differences over years which may have different weather or other variables to analyze (e.g., usage from 2020 may be different due to changes in electricity consumption due to effects of COVID compared against other years). The utilities believe that 12 months is sufficient and that it can be accommodated with current IT infrastructure and data retention policies, which they say means it likely will not have a material cost impact to implement.

### 3. Oversight of Third Parties

Both documents envision a light-touch regulation of third parties, because there appeared to be universal agreement that the Commission lacks jurisdiction over non-utility third parties. However, each document goes about it slightly differently. The revised Facilitator Strawman details a specific set of requirements that a third party would have to follow, such as being DataGuard certified, in order to be eligible for accessing customer data with consent. The revised Facilitator Strawman identifies Commission authority to review, adopt, and enforce utility tariffs and forms, and that if an entity is in violation of that Commission-approved tariff, the Commission can exercise some limited amount of jurisdiction by directing the utility to cease sharing information with that third party. The Joint-Utility Strawman removes the ability of the Commission to enforce a tariff, and leaves enforcement with the utility by allowing the utility to determine whether a third party's data access should be suspended or terminated for improper conduct. The aggrieved third party could then use the existing complaint process to appeal any such actions. Furthermore, the Joint-Utility Strawman lets each individual utility design different Terms and Conditions for AMI data sharing. The Utilities stated while the Commission is not asked to review or approve each utility's Terms and Conditions for AMI data sharing, the Terms and Conditions are subject to the existing complaint process.

In both cases, the Commission is not attempting to assert direct regulation of third party activities, but each document has the Commission playing different roles.

### 4. Model Framework

To implement a tariff, rule, or framework, the use of existing models can help the Commission identify how they want their authority to be exercised. There are a number of model frameworks and standards that touch on various aspects of data access, data use, and data privacy, such as the FIPPs and Department of Energy's DataGuard. Additionally, several states around the country have already implemented their own set of data access, use and privacy rules, such as those adopted by the California Public Utilities Commission, Illinois Commerce Commission, and the Public Utility Commission of Texas, which differ significantly on how those issues are treated. Additionally, there are pending proposals, such as the joint proposal of Mission:data and the North Carolina Attorney General's Office before the North Carolina Utility Commission that attempt to move the conversation forward by melding customer protection practices and enabling third party access to customer data in a standardized manner. Each of the Facilitator Strawman and the Joint-Utility Strawman leans on some of that prior work to some extent, although, as noted above, one proposal provides greater details around the privacy and accessibility of data than the other.

## 5. Length of Consent

Each of the revised Facilitator Strawman and the Joint-Utility Strawman takes a different view of how long a customer's consent lasts. The revised Facilitator Strawman says that the customer can enter the length of time that the consent is valid, including indefinite or until the customer revokes consent. The Joint-Utility Strawman believes customers would be better protected by allowing consent to last for no longer than 12 months, and then the customer would need to affirm that they continue to consent to sharing for another term by going through the consent process again.